IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 15538 of 2006(Y)

AGAINST THE ORDER DATED 01 /02 / 06 IN IA.722/06 IN OS.1174/2003 of I ADDL.M.C.,ERNAKULAM

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PETITIONER:

M.V. RAJAN, S/O. VELAYUDHAN,
AGED 71 YEARS, MULLASSERY HOUSE, PALAPARAMBU,
PACHALAM P.O., KOCHI-682012.

BY ADV. SRI.V.R.RAMACHANDRAN NAIR
SRI.R.PREMCHAND
SMT.A.A.DILSHAH

RESPONDENTS:

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1. GOPI, S/O. KRISHNANKUTTY,
AGED 67 YEARS, PALAPARAMBU HOUSE, PACHALAM P.O.,
KOCHI-682012.

2. RADHA, W/O. DIVAKARAN,
AGED 62 YEARS, PALAPARAMBU HOUSE, PACHALAM P.O.,
KOCHI-682012.

3. STATE OF KERALA,
REPRESENTED BY THE GOVERNMENT PLEADER,
HIGH COURT OF KERALA.

BY ADV. SRI.M.S.UNNIKRISHNAN-R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.9C)15538/06

APPENDIX

PETITINER'S EXHIBITS

EXT.P1: TRUE COPY OF PLAINT IN O.S.1174/03 OF MUNSIFF'S COURT, ERNAKULAM.

EXT.P2: TRUE COPY OF I.A.4589/05 IN O.S.1174/03 OF MUNSIFF COURT,ERNAKULAM

EXT.P3: TRUE COPY OF COMMISSION REPORT SUBMITTED IN I.A.4589/05 IN O.S.1174/03

EXT.P4: TRUE COPY OF OBJECTION FILED BY PETITINER AGAINST COMMISSION REPOR. I.A. 4589/05 IN O.S.1174/03.

EXT.P5: TRUE COPY OF COMMISSION APPLICATION FILED BY PETITIONER AS I.S. 722/06 IN O.S.1174/03.

EXT.P6: TRUE COPY OF ORDER DISMISSING APPLICAITN NO.722/06 IN O.S.1174/03

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.15538 OF 2006

DATED THIS THE 15th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the plaintiff and respondents the defendants in O.S.1174/03 on the file of I Addl. Munsiff's Court, Ernakulam. Petitioner is challenging Ext.P6 order passed by learned Munsiff in I.A.722/06. Ext.P5 is that application. In that application petitioner sought appointment of a Commissioner to measure the pathway and demarcate the same. Under Ext.P6 order, learned Munsiff dismissed the application holding that the report and plan submitted by Commissioner available in the suit shows the details sought for in Ext.P5 application. This petition is filed under Article 227 of Constitution of India challenging that order.

2. Learned Counsel appearing for petitioner and respondents were heard.

3. Arguments of learned counsel appearing for petitioners was that under Ext.P2 application, defendants sought only appointment of a Commissioner to fix northern and western boundaries and what was sought for by petitioner in Ext.P5 application is to demarcate the way after measurement and in such circumstances, Ext.P2 is to be quashed. Ext.P3 is the report and plan submitted by Commissioner in

the same suit. The entire details are furnished by Commissioner and measurements are also given in Ext.P3 report and plan. In such circumstances, I do not find any illegality or impropriety in Ext.P6 order warranting interference in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

Petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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